

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 PATRICIA HEDGES, PARENT OF)
5 CHRISTINA, CHRISTOPHER AND)
6 JUSTIN HEDGES, MINOR CHILDREN,)

7 Petitioner,)

8 VS.)

9 THE LAKE COUNTY TRANSPORTATION)
10 COMMITTEE,)

11 Respondents.)

OSPI 219-93

DECISION AND ORDER

12 * * * * *

13 **PROCEDURAL HISTORY AND FACTS OF THIS APPEAL**

14 Patricia Hedges, the parent of three elementary students
15 living in Swan Lake/Salmon Prairie School District No. 73, Lake
16 County, appeals an Order of the Lake County Transportation
17 Committee [hereinafter "the Committee"]. The Committee
18 determined that the Swan Lake Trustees' decision not to make an
19 interlocal transportation agreement with another district does
20 not constitute a school controversy or contested case to be heard
21 by a transportation committee.

22 In September, 1992, District No. 73 reopened the Swan Lake
23 Elementary School, which is near the Hedges home in Lake County.
24 The Hedges children were attending a school in another district -
- Bigfork Elementary in Flathead County. Ms. Hedges wanted her
children to attend Bigfork Elementary and ride the school bus

1 that carries District No. 73's high school students to Bigfork
2 High School.

3 To achieve this goal, Ms. Hedges asked the Trustees of
4 School District No. 73 [hereinafter the "Swan Lake Trustees"] to
5 enter into an interlocal agreement with the Trustees of Bigfork
6 School District No. 38 [hereinafter "the Bigfork Trustees"].
7 This was necessary because the Flathead County Transportation
8 Committee has a written policy that a high school bus may not
9 pick up out-of-district elementary students unless there is an
10 interlocal agreement.

11 On September 22, 1992, the Swan Lake Trustees decided not to
12 enter into an interlocal agreement. Ms. Hedges appealed to the
13 Transportation Committee. On November 16, 1992, the Swan Lake
14 Trustees moved to dismiss the appeal because the subject matter
15 of the appeal -- trustees' refusal to enter into an interlocal
16 transportation agreement -- does not give rise to a school
17 controversy or contested case.

18 The Trustees' motion is similar to moving to dismiss for
19 failure to state a claim for which relief can be granted. The
20 Trustees maintain that the decision to enter into an interlocal
21 agreement is discretionary. Absent a claim by Ms. Hedges that
22 they exercised their discretion in an arbitrary and capricious
23 manner, the Transportation Committee cannot compel them to enter
24 into an interlocal agreement.

25 The Transportation Committee convened to hear the dispute on

1 November 16, 1992. The initial issue was the Swan Lake Trustees'
2 motion to dismiss. The Transportation Committee concluded that
3 making an interlocal transportation agreement is a discretionary
4 act left up to the elected Trustees. There was no statute
5 compelling the Swan Lake Trustees to enter into an interlocal
6 transportation agreement and there was no claim that they
7 exercised their discretionary powers regarding interlocal
8 agreements in an arbitrary or capricious manner. Given this, the
9 Committee determined there was no basis for a contested case or
10 school controversy.

11 The motion to dismiss was granted and an order was issued
12 December 4, 1992. Ms. Hedges appealed to this Office December
13 23, 1992.

14 STANDARD OF REVIEW

15 This is a review of a County Transportation Committee
16 decision under § 20-10-132, MCA. This Superintendent applies the
17 standard of review of administrative decisions established by the
18 Montana Legislature in § 2-4-704, MCA, and adopted by this
19 Superintendent in § 10.6.125, ARM. Findings of fact are reviewed
20 under a clearly erroneous standard and conclusions of law are
21 reviewed under an abuse of discretion standard. Harris v.
22 Trustees, Cascade County and Nancy Keenan, 241 Mont. 272, 731
23 P.2d 1318 (1990). The petitioner bears the burden of showing
24 that he has been prejudiced by a clearly erroneous ruling. Terry
25 v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153

1 (1986).

2 Findings are upheld if supported by substantial, credible
3 evidence in the record. A finding is clearly erroneous only if
4 a "review of the record leaves the Court with the definite and
5 firm conviction that a mistake has been committed." Waae Appeal
6 v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194,
7 at 198 (1984).

8 Conclusions of law are subject to more stringent review.
9 Conclusions of law are reviewed to determine if the agency's
10 interpretation of the law is correct. Steer, Inc. v. Dept. of
11 Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

12 DECISION AND ORDER

13 The decision of the Transportation Committee to grant the
14 Motion to Dismiss is a conclusion of law. The Committee
15 correctly concluded that a Board of Trustees' decision not to
16 enter into an interlocal transportation agreement with another
17 school district is not a school controversy or contested case
18 that is appealable to a transportation committee. The order of
19 the Committee is AFFIRMED.

20 MEMORANDUM OPINION

21 Section 20-10-132, MCA, states in part:

22 (1) It shall be the duty of the county transportation
23 committee to: . . . (d) conduct hearings to establish
24 the facts of transportation controversies which have
25 been appealed from the decision of the trustees and act
on such appeals on the basis of the facts established
at such hearing.

(2) After a fact-finding hearing and decision on a

1 transportation controversy, the trustees or a patron of
2 the district may appeal such decision to the
3 superintendent of public instruction who shall render
a decision on the basis of the facts established at the
county transportation committee hearing.

4 The language in this statute relevant to this appeal is
5 "conduct hearings to establish the facts of transportation
6 controversies . . . and act on the facts established at such
7 hearing." When there is a factual dispute to be resolved about
8 school trustees' application of statute or policy to a particular
9 transportation dispute, a transportation committee must hold a
10 hearing to determine what the facts are. See, for example, Teri
11 Lynn Adams v. Musselshell County Transportation Committee, OSPI
12 172-89, decided October 24, 1989. 8 Ed. Law 137 (OSPI 1989).
13 Citizens are entitled to equal protection from statutes and they
14 have a right to a hearing to determine if the law is being
15 applied consistently to their circumstances.

16 This case, however, does not raise a factual dispute. Ms.
17 Hedges was not asking the Transportation Committee to hear a
18 dispute about the Swan Lake Trustees' application of a particular
19 statute to her factual situation. She wanted the Transportation
20 Committee to reconsider a policy decision of the Swan Lake
21 Trustees not to make an interlocal transportation agreement with
22 the Bigfork Trustees, which is a discretionary act.

23 The Transportation Committee does not have the power to
24 order the Swan Lake Trustees to make interlocal transportation
25 agreements. As the Swan Lake Trustees' motion to dismiss stated,

1 trustees are not required by law to enter into any transportation
2 agreements. It is a matter left up to trustees' discretion as
3 the elected officials charged with the basic management of the
4 schools in their district.

5 The Montana Constitution has specifically established the
6 principle that the basic management of a school is in the hands
7 of the trustees. Art. X, § 8, Mont. Const., states:

8 The supervision and control of schools in each school
9 district shall be vested in a board of trustees to be
elected as provided by law.

10 While this constitutional provision does not give trustees
11 carte blanche to make discretionary decisions in an arbitrary and
12 capricious manner, it does give them the responsibility for
13 making decisions regarding the schools in their district.
14 Section 20-10-132, MCA, does not transfer that responsibility
15 from the Trustees to a Transportation Committee.

16 Emphatically, this opinion does not mean that Transportation
17 Committees can dismiss all appeals. Petitioners have a statutory
18 right to be heard on factual disputes regarding transportation
19 decisions. If they claim that Trustees are not correctly
20 applying the transportation statutes to their facts, or do not
21 understand their facts, or are arbitrarily and capriciously
22 acting on their facts, they have a right to be heard.

23 Ms. Hedges did not bring such a claim to the Transportation
24 Committee, however. She was challenging a policy decision that
25 affects all children equally -- the Swan Lake Trustees decision

1 not to enter into an interlocal agreement with the Bigfork School
2 District. That decision is well within the discretionary powers
3 of the Trustees.

4 The Transportation Committee properly granted the Swan Lake
5 Trustees' motion in this case and dismissed an appeal of a
6 question over which they had no power. The Trustees' motion was
7 similar to a motion to dismiss for failure to state a claim for
8 which relief can be granted. Not every action of a board of
9 trustees gives rise to an administrative or judicial appeal.
10 Trustees -- not Transportation committees, the Office of Public
11 Instruction or the Courts -- are responsible for the basic
12 operation of Montana's schools. Trustees are elected through the
13 democratic process and constitutionally charged with the
14 responsibility of managing Montana's schools. If a person does
15 not agree with a Trustees' management decision, often the avenue
16 to correct that is the political process, not appeal to the
17 County Superintendent or the Transportation Committee.

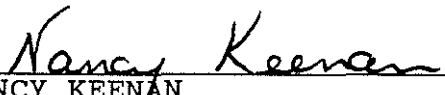
18 Sections 20-3-107, 20-3-210 and 20-10-132, MCA, are
19 procedural, not jurisdictional, statutes. As stated in Althea
20 Smith v. Board of Trustees, Judith Basin County School District
21 No. 12, OSPI 200-91, decided July 21, 1992, 11 Ed. Law 65 (OSPI
22 1992), affirmed on other grounds in Smith, Montana First Judicial
23 District, Cause No. CDV 92-1331 (February 10, 1993):

24 Unless a claimant has a case in controversy (contested
case), the administrative process is not invoked and
the county superintendent is without jurisdiction to

1 hear the complaint and the complaint must be dismissed.
2 To find that § 20-3-210, MCA, confers unlimited
3 jurisdiction on a county superintendent leads to absurd
4 results. I cannot believe that the legislature
5 intended to subject every decision of a board of
6 trustees to judicial review. If the county
7 superintendent must hear an appeal on every decision of
8 a board of trustees, this would be the result.

9 This is also the position of this Superintendent on the
10 extent of County Transportation Committee hearings. The Lake
11 County Transportation Committee correctly dismissed the appeal.


12 DATED this 12 day of October, 1993.

13 
14 NANCY KEENAN

15 **CERTIFICATE OF SERVICE**

16 THIS IS TO CERTIFY that on this 12th day of October, 1993,
17 a true and exact copy of the foregoing Decision and Order was
18 mailed, postage prepaid, to the following:

19 Patricia Hedges	Joyce Decker-Wegner
20 c/o Box 114	Lake County Superintendent
21 Swan Lake, Montana 59911	Lake County Courthouse
	Polson, Montana 59860

22 
23 Scott Campbell
24 Paralegal-Assistant
25 Office of Public Instruction